

1 Short Title: Reform/Correct/Wills and Trusts.

2 A BILL TO BE ENTITLED

3 AN ACT TO PROVIDE FOR THE JUDICIAL REFORMATION OF WILLS TO CORRECT
4 MISTAKES AND THE JUDICIAL MODIFICATION OF WILLS TO ACHIEVE THE
5 TESTATOR'S TAX OBJECTIVES AND TO REVISE THE NORTH CAROLINA
6 UNIFORM TRUST CODE TO ACHIEVE CONSISTENCY IN THE REFORMATION
7 OF TRUSTS WITH THE REFORMATION OF WILLS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Chapter 31 of the General Statutes is amended by adding a new Article to
10 read:

11 "Article 10.

12 "Reformation or Modification of Wills.

13 **"§ 31-61. Reformation of will to correct mistakes.**

14 The court may reform the terms of a will if the terms of the will are ambiguous to
15 conform the terms to the testator's intent if it is proved by clear and convincing evidence what
16 the testator's intent was and that the terms of the will were affected by a mistake of fact or law,
17 whether in expression or inducement. Jurisdiction of an action brought under this section shall
18 be as provided in G.S. 28A-2-4.

19 **"§ 31-62. Modification of will to achieve the testator's tax objectives.**

20 The court may modify the terms of a will in a manner that is not contrary to the testator's
21 probable intent to achieve the testator's tax objectives. The court may provide that the
22 modification has retroactive effect.

23 **"§ 31-63. Filing of action for reformation or modification of will; bar to caveat.**

1 (a) An action for reformation or modification of a will under this Article shall be filed
2 in the superior court division of the General Court of Justice.

3 (b) The personal representative is a necessary party to an action under this Article.

4 (c) If a person interested in the estate files an action for the reformation or
5 modification of a will under this Article, that person is barred from thereafter filing a caveat to
6 the will under Article 6 of this Chapter."

7 **SECTION 2.** G.S. 28A-2-4 reads as rewritten:

8 **"§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.**

9 (a) The clerks of superior court of this State, as ex officio judges of probate, shall
10 have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this
11 subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings
12 include, but are not limited to, the following:

13 (1) Probate of wills.

14 (2) Granting and revoking of letters testamentary and letters of administration,
15 or other proper letters of authority for the administration of estates.

16 (3) Determination of the elective share for a surviving spouse as provided in
17 G.S. 30-3.

18 (4) Proceedings to ascertain heirs or devisees, to approve settlement
19 agreements pursuant to G.S. 28A-2-10, to determine questions of
20 construction of wills, to determine priority among creditors, to determine
21 whether a person is in possession of property belonging to an estate, to
22 order the recovery of property of the estate in possession of third parties,
23 and to determine the existence or nonexistence of any immunity, power,

1 privilege, duty, or right. Any party or the clerk of superior court may file
2 a notice of transfer of a proceeding pursuant to this subdivision to the
3 Superior Court Division of the General Court of Justice as provided in
4 G.S. 28A-2-6(h). In the absence of a transfer to superior court, Article 26
5 of Chapter 1 of the General Statutes shall apply to ~~a trust~~ an estate
6 proceeding pending before the clerk of superior court to the extent
7 consistent with this Article.

8 (b) Nothing in this section shall affect the right of a person to file an action in the
9 Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of
10 Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in an
11 estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General
12 Statutes, either party may move for a transfer of the proceeding to the Superior Court Division of
13 the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In
14 the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall
15 apply to an estate proceeding to the extent consistent with this Article.

16 (c) Without otherwise limiting the jurisdiction of the Superior Court Division of the
17 General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection
18 (a) or ~~(e)~~(b) of this section or G.S. 28A-2-5 of the following:

- 19 (1) Actions by or against creditors or debtors of an estate, except as provided
20 in Article 19 of this Chapter.
- 21 (2) Actions involving claims for monetary damages, including claims for
22 breach of fiduciary duty, fraud, and negligence.
- 23 (3) Caveats, except as provided under G.S. 31-36.

